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METHODS OF

CONSTITUTIONAL REFORM;

WITH REASONS WHY

No Constitutional Convention

SHOULD BE CALLED BY THE

GENERAL ASSEMBLY.

By GEORGE PRATT.

"In the course of forty years I have been called twice to assist in the formation of a "constitution for this State. This kind of architecture I find is an art or mystery very "difficult to learn and still harder to practice. * * * * The probability is that the "fabrication of constitutions will be the occupation, or the sport, the tragedy, comedy, or "farce, for the entertainment of the world for a century to come."—*John Adams to Richard Rush, May* 14, 1821.

NORWICH:
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Prefatory Note.

The author of this pamphlet appeared before a Committee of the General Assembly last year, in opposition to the calling of a constitutional convention. Requests that have been made for copies of that argument, and indications that the same proposition was to be brought before the legislature, at its coming session, as well as a sincere conviction that no constitutional convention should be called, are the reasons for this publication. It contains the substance of the argument made before the Committee, with certain additional suggestions which have occurred to the mind of the writer.

GEO. PRATT.

Norwich, April 23, 1874.

Methods of Constitutional Reform,

With Reasons showing that a Constitutional Convention is not Necessary.

Although nearly a century has elapsed since the foundation of the republic, during which time there have been formed, and put in operation, more than fifty different constitutions for the several States, the question as to the best method of altering or amending a written constitution has not yet been settled.

Many of these constitutions have contained no provision for their own amendment, and, in that case, recourse has generally been had to a convention of delegates chosen by the people, under the sanction of the legislature. But a serious question arises concerning those constitutions which, like that of Connecticut, prescribe the manner in which all alterations and amendments shall be made. Has the legislature any constitutional power to call a convention to amend or alter the constitution in a different method from that prescribed in the instrument itself?

I propose to discuss this question briefly, and to show that the General Assembly has no such power; and that although, in cases of extremity, the legislature or the people might be warranted in calling a convention outside of the constitutional provisions, there is not only nothing in the situation of affairs in the State calling for such an extraordinary remedy, but that there is no certainty that such a convention, if called, would give us a better constitution than the present one, if the ideas of its projectors were embodied in the instrument. It will be noted that the first proposition is concerning the legal right, the second concerning the duty of the General Assembly to act. The questions are totally distinct, and it is from the intermingling of the two that much of the confusion has arisen.

What power of altering or amending the constitution has the General Assembly?

The full text of article XI. of the constitution, which provides for amendments, is as follows:

"Whenever a majority of the House of Representa-
"tives shall deem it necessary to alter or amend this
"constitution, they may propose such alteration and
"amendments; which proposed amendments shall be
"continued to the next General Assembly, and pub-
"lished with the laws which may have been passed at
"the same session; and if two-thirds of each house, at
"the next session of said assembly, shall approve the
"amendments proposed, by yeas and nays, said amend-
"ment shall, by the secretary, be transmitted to the

"town clerk of each town in the State, whose duty it "shall be to present the same to the inhabitants there- "of for their consideration at a town meeting legally "warned and held for that purpose; and if it shall "appear, in manner to be provided by law, that a "majority of the electors present at such meetings "shall have approved such amendments, the same shall "be valid, to all intents and purposes, as a part of "this constitution."

It will be seen that the constitution provides distinctly what shall be done by the legislature, whenever a majority of the House of Representatives shall deem it necessary to alter or amend the constitution. It points out how the amendments or alterations may be proposed and adopted. It confers no power to call upon the body of electors to say whether they will alter or amend the constitution. It contemplates action by the legislature, in the first place, upon every amendment, and then a submission to the people of the alterations or amendments, as perfected by the legislative body.

The act of calling a constitutional convention would show that a majority of the House of Representatives deemed it necessary to alter or amend the constitution. For, if they did not deem it necessary, they would take no steps to call a convention. But the constitution says, that when they deem it necessary to alter or amend the constitution they shall act in the method pointed out in the instrument. Can they act in another manner and not violate the constitution?

It will not do to say, that it is only proposed to submit to the people the question whether they will call the convention. The action of the people only derives its force from the action of the legislature. The constitutional functions of the legislature can neither be restrained, nor enlarged, by the vote of the body of the people.

It is sometimes maintained that under the American theory of government, there exists in every one of the States, beside the two regular legislative bodies, the CONSTITUTIONAL CONVENTION—a third body emanating directly from the people—possessing unlimited powers, superior to all laws and constitutions, a body that is exceedingly easy to summon, but very difficult to control.

This doctrine would seem to be subversive of all the protection to the minority, which has been counted one of the virtues of a written constitution. If the majority can at any time summon a convention, a majority of the convention frame the constitution, and a majority of the people approving the constitution, it thereupon becomes the fundamental law, we are, at any time, at the mercy of an accidental and temporary majority who may exercise the power of summoning into existence this convention of unlimited powers.

Take an example. Suppose the supreme court to make an unpopular decision. The legislature cannot

attack the court, because it exists under the constitution. But, according to this view of the functions of the convention, the legislature might call into existence, either by themselves or through the people, the convention, which by a major vote could abolish the court, and their action being ratified by the majority of the people, the unpopular court would be swept out of existence. All this within a few months, and upon one of those impulses which sometimes affect states as well as individuals.

The power of calling a convention being therefore of such doubtful right as only to be exercised in extreme cases, if at all, it is necessary to consider whether there is any thing in the situation of affairs in this State which calls for the exercise of this power.

The machinery of amendment provided by the constitution is ample for the expression of the settled will of the people. Not one of the writers, who have advocated a constitutional convention has pointed out any instance of a desirable reform which has persistently been presented to the legislature for their approval, and by them been persistently denied. In fact, it would appear that great facility of amendment has been permitted. No less than fourteen amendments have been adopted since the formation of the constitution. Some of these amendments have been amended, and one has become obsolete; and the

most prominent advocates of the convention propose to alter or repeal more than one-half of these amendments.

In the last few years an amendment, which received the approval of the requisite number of the General Assembly, failed to obtain the approval of the people. These instances show that the settled will of the people of this State can, and does find, sufficient expression through the provision for amendment, made by the constitution itself.

If the grievances complained of, and for the redress of which the extraordinary action of a convention is invoked are examined in detail, the truth of the above statement will appear still more clearly.

I will endeavor to group together the different changes proposed by the various writers and speakers whose pamphlets and speeches I have seen or heard, though I may not enumerate them all.

The governor should have a council; should have the power of pardon; should appoint the judges; should be elected once in two years; in short, much greater power should be conferred upon the executive.

The judiciary should be appointed for life, and not elected by the legislature for a term of years.

The legislature should be elected biennially; should meet in winter, and the whole constitution of both senate and house should be changed.

Beside these changes in the three departments of

government certain other changes are suggested, the chief of which are the following: abolition of the plurality rule in elections; minority representation; different method of nominating candidates for office; consolidation of town and city governments; enlargement of probate districts and change in the method of appointing the judges; abolition of the requirement of unanimity in a jury to render a verdict; and finally, no special legislation on any subject.

Of these changes, some could be effected at any time by the action of the General Assembly, others would require an amendment to the constitution. Concerning most of these proposed changes, grave questions might be made as to whether they were improvements upon the present system. In regard to none of them has there been any indication that the wishes of a majority of the people have been persistently disregarded by a majority of the legislature. As to only five of these changes it is said that the Constitutional Reform Association is a unit. 1. A change in the basis of representation in the General Assembly. 2. Minority representation. 3. Less frequent elections. 4. November elections. 5. A permanent tenure of office for the judiciary.

I will consider the last four of these changes in the first place, as they are of minor importance compared with the first.

As to minority representation, it is safe to say that

it is a subject which has been but little agitated in this State, and still less understood. It may be that the Reform Association understand it thoroughly; but I fear the majority of them would fail in an examination upon the merits of the various systems which have been put forth by the different writers upon this topic. It is yet a matter of experiment, the result of which is doubtful; and it would hardly be worth while to call a convention to try a doubtful experiment.

The questions of biennial elections, and the change of time to November, which are the third and fourth points on which the reformers are agreed, have been brought before the General Assembly several times, but have never met with any great support. The reasons that have been given heretofore for not changing the time of elections, and the time of the meeting of the legislature to the winter season are, that such change would necessarily, as the experience of other States shows, make the sessions longer and more expensive; that it would involve an entire change in the terms of the various officers of the State, and render necessary a total revision of the laws in every matter in which the legislative year was concerned; and that these changes were not warranted by any compensating advantage, and, in many instances, might be a serious detriment.

These points are, however, concerning matters involving rather the convenience of the people and their representatives, than any principle of government. As soon as any decided majority are in favor of these changes they will come, as matter of course, through the regular method of amendment without invoking the extraordinary aid of a convention.

The fifth point is the change in the appointment of the judges. I heartily agree with the advocates of this change. But I very much question whether it would be adopted by a convention any more readily than by the legislature. So far as the people of the State are concerned, the truth is, that under a cry of reform, in 1856, the tenure of office was fixed at a term of years, and there have been no indications that any considerable portion of the people wished to return to the old system, or to change the method of appointment. The same power that made the change, in 1855 and 1856, would reverse its action in 1874, at the wish of the people.

But these four points of change are only suggestions and make-weights to induce the calling of a constitutional convention for the purpose of making the change, in which all the writers and speakers in favor of the convention are agreed, and that is, a virtual revolution of the system of representation.

If any one is in favor of this change, then he must necessarily be in favor of a constitutional convention,

for I do not believe that any radical change in the constitution of the General Assembly can be effected without a convention. There might be a change in the senatorial districts, and a return to the election of senators at large, though it is doubtful, since this is one of the amendments adopted since the constitution was framed. But any action tending to the lessening of the power of the towns in the General Assembly could hardly be expected from the representatives of those towns.

This, then, is the great argument in favor of a constitutional convention—the necessity of a reform in the General Assembly itself, which reform is of such a radical nature that it cannot fairly be expected from that body. I am aware that there is an attempt on the part of some writers to show that no real attack upon the power of the towns is meditated—that somehow, but in what manner is not exactly detailed, the change is to be effected, and there is to be no surrender of "the old principle of the representation of municipalities, or permanently organized and self-governed constituencies." But these writers, who profess so great a regard for the rights of the towns, propose a plan which would be a virtual overthrow of the Connecticut system. It is that the towns shall be represented, to a certain degree, according to their size; giving New Haven from five to ten representatives, according to the ratio which population shall bear to representation,

and in the same manner with the larger cities; but reducing the representatives in all the smaller towns to one. This plan, if carried out in connection with the changes proposed in the senate, will effectually end the ancient Connecticut system. It will take the power from the towns and give it to the cities. We shall be represented according to quotas of population, instead of municipal divisions.

In fact the issue, however it may be disguised with smoothness of words, is between the towns and the cities; between the people that dwell scattered in the valleys and on the hillsides of the country, and the denser population of the city. The practical question is, whether the cause of good government would be promoted by such a change. Does experience show that in those States where cities have control, according to their population, the government is administered on purer and better principles than in Connecticut? It is not necessary to say with Pope,

> "For forms of government let fools contest;
> Whate'er is best administered is best."

It is a sufficient answer to the demand for a change to show that the present system produces a careful and prudent administration of affairs; protects the persons and property of the people; preserves order, and does justice; and that there is nothing in the system which has a tendency to beget or foster, either oppression or injustice.

It is scarcely necessary to affirm that the burden of proving the necessity for a change in the fundamental law of the State is with the advocates of such a change. They are bound to show that in all those particulars in which they want the constitution remodeled it has failed to answer the requirements of good government. It is not enough to assert that a certain theory of government requires a different constitution. Theories of government vary with every generation of political writers. The combinations of a kaleidoscope would be a faint image of the constitution which should present, and follow, the views of all those who have advocated changes in constitutions since that of Connecticut was adopted.

Bearing in mind these principles, and examining the arguments and facts brought forward by the advocates of a constitutional convention, they fall far short of proving either the necessity or policy of changing the constitution by such extraordinary means as is proposed. This will appear, not only from what I have hitherto alluded to, but from an examination of the following reasons, which fall under two classes; the first based upon facts, the second upon theories. The facts that are adduced are:

1. That the occupations of the people have greatly changed since the adoption of the constitution. It is difficult to see why change of occupation in a man should create a necessity for a change in the funda-

mental laws by which he is governed. The constitution that was right for the weaver by hand should be right for the weaver in the mill. The elector remains the same, whether he casts his ballot fresh from the plough or from the workshop. The constitution only concerns itself with those principles which are universal and general in their application, and are applicable to all men, whatever their occupation may be.

2. It is said that a change in the distribution of population renders the amendment of the constitution necessary; that, because the population has been gathered into the cities and larger towns, instead of being equally distributed throughout all the towns of the State, therefore the system of representation should be changed. I submit that this is a mere begging of the question. If the system of town representation has been proved by experience to work well, no change in the numbers of the inhabitants of a town calls for a change. It is the municipality, and not its quota of population, that is represented. The former is fixed, the latter may fluctuate with time, growing either greater or smaller. To grant that an increase of population necessitates an increase of representation yields the whole question at issue. But if municipal representation is to be continued, the question of population cannot affect it.

3. A change in the distribution and aggregation of the wealth of the people, and that a great portion of

this wealth is centered in corporations, is suggested as another reason for the change. This suggestion is made, not so much in reference to any specific reform, as an argument for a general remodeling of our institutions. But it is difficult to see how constitutional changes can stop the aggregation of wealth, or prevent that wealth from having its natural influence. That it has any greater influence upon the Connecticut legislature, on account of the manner in which it is chosen, is not claimed by any of the advocates of change. Indeed, the numbers and material of the House of Representatives are considered by all as the greatest safeguard against its corruption by wealthy corporations. The change proposed would put more representatives into those places where the wealth is aggregated, and would foster, instead of check, the influence of corporations. That such is the fact is shown in the case of every State where greater power is given to the cities, which are the homes of corporate bodies, and of wealth.

4. Changes in race and religion are suggested as reasons for constitutional changes. I am unable to see how these should affect the question. If there are any two matters which should have no influence upon a constitution they are these. Any changes made, as is suggested, on account of the great numbers of Irish and Roman Catholics who have come into the State, must either be in favor of that race and religion, or

against that race and religion. Either change would be objectionable. Or, the questions of race and religion must be ignored altogether, as they now are, which is the wisest course.

5. Beside these reasons mentioned above are given others of a more general nature as arguments for a change: like "the general progress of civilization," and "changes in public sentiment," and that the present constitution is "a little behind the age:" that it was well enough for the stage coach days, but will hardly do for this age of railroads and telegraphs.

Precisely what these phrases mean, is not disclosed. There might be, I suppose, a fashion in constitutions as well as in hats or coats; and perhaps the newly dressed States of New York, Illinois, and Pennsylvania, with their modern constitutions, might appear to the gaze of the multitude to be much finer than Connecticut. But I fancy that a serviceable garment, which keeps the wearer warm and comfortable, will not, by sensible persons, readily be exchanged for a new one of untried material, which, though it may be more gorgeous to behold, might wofully fail in storm and tempest. It would be better to bear the reproach of being "behind the age" than to expose the constitution to the fever of demagogism, and the quackery of its medicines.

It is a matter of grave doubt whether these constitutions, with all the modern improvements so-called, are such safe structures as their makers claim. They

have yet to stand the crucial tests of experience and time. When a constitution shall be framed, and adopted in any State, which produces a better administration of the government, more virtuous and law-abiding citizens, purer and more intelligent legislation, a wiser and more impartial judiciary, than exists in Connecticut, then it is time for us to try the same experiment. It has not yet been found, or else the advocates of a new constitution have failed to point it out. In fact, it is not a little singular that, amid all the arguments put forth for the change, no instances of maladministration by the executive, of misgovernment by the legislature, or of corruption, or partiality on the part of the judiciary have been cited.

As to the reasons for a change, based upon a theory, they have, perhaps, been sufficiently indicated already, and but a slight further discussion is necessary. In regard to the tenure of office of the executive, and of the legislature, it is assumed, theoretically, that the choice of the executive for two or four years, and biennial elections of the legislature will necessarily be for the best interests of the State. No facts are given, nor premises adduced, to support this theory. It may be fairly met with an equally positive assertion, which the experience of this State confirms, that short annual sessions of the General Assembly are the best for the government of the State. The annual session has the argument of precedent and convenience to support it,

and would not readily be given up by the people. The other theoretical changes proposed are of the same character; they rest upon assertion and not upon experience. I am aware that it can be said that without trial and without experiment we can learn nothing new, cannot test the truth of these theories, which, after all, may be better for the State.

The answer is, that our State is not in such a condition as to make it best to run the risk, and undertake the cost of an experiment; nor even to make the expense of calling a convention to ascertain if an experiment shall be made. The experience of Connecticut might be like that of Massachusetts, which, having had two constitutional conventions, at a great expense to the State, adhered to the ancient and settled form of government.

We then conclude that the power, which the General Assembly is asked to exercise, is doubtful in itself; that if it exists, it is of such a quasi-revolutionary character as only to be exercised in cases where amendments, necessary for the public welfare, are persistently denied by that portion of the legislature representing the minority of the people; that no such grievances are shown to exist; and that there are no practical evils in the administration of the government of this State, of such magnitude as to call for the extraordinary remedy proposed.

One word further in regard to the General Assembly, as that is the main point of attack. The constitution itself provides for, and contemplates, a redivision and redistricting of the State, so as to provide for additional and varying senatorial districts. If the senate does not answer to the ideas of the constitution, it can be remodeled in the regular method of amendment, if such amendment shall be properly framed and brought before the legislature. No such amendment has ever been pressed. If any have been offered they have been languidly advocated, and suffered to die a lingering death, generally because members of both political parties discovered something in the amendments that they did not like. On a somewhat careful examination of the doings of the General Assembly for the last twenty years, I find no trace of any amendment having been offered which conforms to the ideas of those who would now change the constitution. The plan proposed is to elect twice or three times as many senators, biennially, by counties, districted according to population, and by "cumulative," or "preferential" voting. I think that this plan could neither be commended or adopted; but before its merits could be discussed it should be presented in more definite shape.

Any abolition or change of the town system of representation ought to be opposed to the last. I need not say to any one familiar with the history of

this country, how potent for good the town organizations of New England have been. Through their instrumentality civil and religious liberty was made secure. It is not too much to say that the town organizations of Massachusetts, Rhode Island, and Connecticut, more than any other power, achieved the independence of these States. They were little republics: each one with its own government, each one ready to meet and to act independently. They cannot be sneered out of existence by calling them "rotten boroughs," or terming them an "oligarchy of communities." Read their local histories in this State, and see with what noble unanimity and zeal they acted a century ago, and how their representatives in the General Assembly were endowed with the same vigor and courage. It is through the same means of local self-government that industry and economy have been fostered, education provided for, and the whole social, political, and intellectual life of the State sustained.

Ever since there has been any representative government in the State, the system has been the same. The towns have been represented as towns in the legislature of this State; no regard being had to their population. Has not the system worked well? Has it not, upon the whole, produced a wise, prudent, and economical administration of affairs? And if a State, like a parent, is to be judged by its children, what a glorious progeny of distinguished names can Connecti-

cut boast. Guided by the thrift and economy taught upon her hillsides, her sons and daughters have carried her fame and institutions through all the vast region that reaches from the lakes to the Pacific.

This is not mere rhetorical assertion. It is simple history. And it behooves those who would change the institutions, the fundamental laws, the very framework of the State, which has accomplished such results, to show some better reasons for the change than they have yet adduced.